

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
REPUBLIC RESTAURANT INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO. 03-12649-NMG
HYDAN WASHINGTON STREET,)	
INC., d/b/a PHO REPUBLIQUE and)	
JACK BARDY)	
Defendant.)	
_____)	

**DECLARATION OF MERTON E. THOMPSON IN SUPPORT OF OPPOSITION
TO MOTION TO DISMISS WITHOUT PREJUDICE AND CROSS-MOTION
FOR A DISMISSAL UPON CONDITIONS**

I, Merton Thompson, counsel for defendant HYDAN WASHINGTON STREET INC., d/b/a PHO REPUBLIQUE and JACK BARDY (collectively "Pho Republique") hereby declare, under the pains and penalties of perjury:

- 1) Attached as Exhibit A is a true and correct copy of the United States Patent and Trademark Office web site print-out of plaintiff's trademark registration.
- 2) Attached as Exhibit B is a true and correct copy of the United States District Court for the Northern District of Texas web site print-out of the docket for plaintiff's trademark litigation activity.
- 3) The hourly rate for my legal service is \$325.00 per hour.
- 3) Attorneys fees associated with the Answer, correspondence and case scheduling to date amount to \$3,500.

4) Attorneys fees associated with opposition to plaintiff's motion to dismiss amount to \$1,400.

/s/
Merton E. Thompson
(BBO# 637056)

BURNS & LEVINSON LLP
125 Summer Street
Boston, MA 02110
Telephone: (617) 345-3000
Facsimile: (617) 345-3299

Dated: July 22 2005

00944208

EXHIBIT A



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★
REPUBLIC

Word Mark	REPUBLIC
Goods and Services	IC 042. US 100 101. G & S: restaurant services. FIRST USE: 19951100. FIRST USE IN COMMERCE: 19951100
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	010103
Serial Number	74732568
Filing Date	September 18, 1995
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	May 28, 1996
Registration Number	2067872
Registration Date	June 3, 1997
Owner	(REGISTRANT) Republic Restaurant Corp. CORPORATION NEW YORK 37A Union Square West New York NEW YORK 10003
Attorney of Record	Leslie K. Mitchell
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

EXHIBIT B

CLOSED, JURY, RAMIREZ

**U.S. District Court
Northern District of Texas (Dallas)
CIVIL DOCKET FOR CASE #: 3:04-cv-01413**

Republic Restaurant Inc v. Noodle-O-1 Inc
Assigned to: Judge Sam A Lindsay
Cause: 15:1114 Trademark Infringement

Date Filed: 06/29/2004
Jury Demand: Defendant
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Republic Restaurant Inc

represented by **Sanford E Warren, Jr**
Winstead Sechrest & Minick - Dallas
5400 Renaissance Tower
1201 Elm St
Dallas, TX 75270
214/745-5400
Fax: 214/745-5390 FAX
Email: swarren@winstead.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

David L Odom
Winstead Sechrest & Minick - Dallas
5400 Renaissance Tower
1201 Elm St
Dallas, TX 75270
214/745-5716

Jeffrey M Tamarin
Reed Smith - New York
599 Lexington Ave
New York, NY 10022
212/521-5400

V.

Defendant

Noodle-O-1 Inc
doing business as
Pho Republic Restaurant

represented by **Dan Duncan Davison**
Fulbright & Jaworski
Texas Commerce Bank Tower
2200 Ross Ave
Suite 2800
Dallas, TX 75201-2784
214/855-8000
Fax: 214/855-8200 FAX
Email: ddavison@fulbright.com

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Dana C Jewell
Fulbright & Jaworski - Dallas
2200 Ross Ave
Suite 2800
Dallas, TX 75201-2784
214/855-8154

Provider

Herbert J Hammond

Date Filed	#	Docket Text
06/29/2004	<u>1</u>	Original COMPLAINT against Noodle-O-1 Inc (Filing fee \$150; Receipt number 208694), filed by Republic Restaurant Inc.(jrb,) (Entered: 06/30/2004)
06/29/2004		***Magistrate Judge Ramirez chosen by random selection to handle matters that may be referred in this case. (jrb,) (Entered: 06/30/2004)
06/29/2004	<u>2</u>	Summons Issued as to Noodle-O-1 Inc. (jrb,) (Entered: 07/01/2004)
06/29/2004	<u>3</u>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Republic Restaurant Inc. (jrb,) (Entered: 07/01/2004)
07/14/2004	<u>4</u>	SUMMONS Returned Executed as to Noodle-O-1 Inc served on 6/30/2004, answer due 7/20/2004. (jrb,) (Entered: 07/15/2004)
07/20/2004	<u>5</u>	Original ANSWER to Complaint with Jury Demand by Noodle-O-1 Inc. (jrb,) (Entered: 07/21/2004)
07/20/2004	<u>6</u>	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Noodle-O-1 Inc. (jrb,) (Entered: 07/21/2004)
07/22/2004	<u>7</u>	ORDER Requiring Attorney Conference and Status Report. Joint Status Report due by 8/23/2004. (Signed by Judge Sam A Lindsay on 7/22/04) (jrb,) (Entered: 07/23/2004)
07/29/2004	<u>8</u>	Application and Order for Admission Pro Hac Vice by Jeffrey M Tamarin for Republic Restaurant Inc. (Mailed copy of order to attorney Jeffrey M Tamarin on 7/30/04.) (Signed by Judge Sam A Lindsay on 7/29/04) (cxb,) (Entered: 07/30/2004)
08/20/2004	<u>9</u>	Joint STATUS REPORT by Noodle-O-1 Inc, Republic Restaurant Inc. (jrb,) (Entered: 08/23/2004)
08/25/2004	<u>10</u>	SCHEDULING ORDER: Amended Pleadings due by 1/3/2005. Discovery due by 6/3/2005. This case is set for trial on this court's four-week docket beginning 10/3/2005 before Judge Sam A Lindsay. Pretrial Conference set for 9/30/2005 02:00 PM before Judge Sam A Lindsay. Joinder of Parties due by 1/3/2005. Motions due by 7/5/2005. Proposed

		Pretrial Order due by 9/12/2005. Pretrial Materials due by 9/12/2005. See order for specifics. (Signed by Judge Sam A Lindsay on 8/25/04) (jrb,) (Entered: 08/26/2004)
08/25/2004	<u>11</u>	ORDER REFERRING CASE to ADR. Type of ADR: mediation. The parties are therefore directed to participate in mediation by 11/5/04. (Signed by Judge Sam A Lindsay on 8/25/04) (jrb,) (Entered: 08/26/2004)
11/05/2004	<u>12</u>	Joint MOTION for Extension of Time to Mediate by Noodle-O-1 Inc, Republic Restaurant Inc (jrb,) (Entered: 11/08/2004)
11/09/2004	<u>13</u>	ORDER granting <u>12</u> Motion to Extend Time. Deadline to participate in mediation is extended to 12/2/04. (Signed by Judge Sam A Lindsay on 11/9/04) (jrb,) (Entered: 11/10/2004)
11/24/2004	<u>14</u>	Joint Status Report and Joint MOTION to Further Extend Mediation Deadline by Noodle-O-1 Inc, Republic Restaurant Inc (jrb,) (Entered: 11/29/2004)
11/24/2004		Joint STATUS REPORT by Noodle-O-1 Inc, Republic Restaurant Inc. (see #14 for image) (jrb,) (Entered: 11/29/2004)
11/29/2004	<u>15</u>	ORDER granting <u>14</u> Motion to Extend Time. The deadline to participate in mediation is extended to 1/5/05. (Signed by Judge Sam A Lindsay on 11/29/04) (jrb,) (Entered: 11/30/2004)
01/04/2005	<u>16</u>	***UNFILED PER ORDER OF 1/5/05*** Joint MOTION to Further Extend Mediation Deadline by Republic Restaurant Inc, Noodle-O-1 Inc (jrb,) (Entered: 01/05/2005)
01/05/2005	<u>17</u>	Order Unfiling <u>16</u> MOTION to Extend Time filed by Republic Restaurant Inc,, Noodle-O-1 Inc, due to the following deficiency: no original filed. (Signed by Judge Sam A Lindsay on 1/5/05) (jrb,) (Entered: 01/10/2005)
01/11/2005	<u>18</u>	Joint MOTION to Further Extend Mediation Deadline by Republic Restaurant Inc, Noodle-O-1 Inc (jrb,) (Entered: 01/12/2005)
01/12/2005	<u>19</u>	ORDER granting <u>18</u> Motion to Extend Time. The deadline to participate in mediation is extended to 2/4/05. (Signed by Judge Sam A Lindsay on 1/12/05) (jrb,) (Entered: 01/13/2005)
02/02/2005	<u>20</u>	Joint MOTION to Further Extend Mediation Deadline by Republic Restaurant Inc, Noodle-O-1 Inc (jrb,) (Entered: 02/03/2005)
02/10/2005	<u>21</u>	ORDER granting <u>20</u> Motion to Extend Time. Ordered that the plaintiff's and dft's deadline to participate in mediation is extended to April 1, 2005. (Signed by Judge Sam A Lindsay on 2/10/05) (jrb,) (Entered: 02/11/2005)
04/08/2005	<u>22</u>	Mediator's Report to the Court Concerning Mediation/Alternative Dispute Resolution Summary filed by Herbert J Hammond. Prv Fee: \$3200.00. Disposition: In ADR.(jrb,) (Entered: 04/11/2005)

04/12/2005	23	Order Directing Administrative Closure. The parties are therefore directed to file the necessary dismissal papers by 5/13/05. (Signed by Judge Sam A Lindsay on 4/12/05) (jrb,) (Entered: 04/12/2005)
05/13/2005	24	Stipulated Order of Dismissal Without Prejudice. The parties shall bear their own attorney's fees and costs. (Signed by Judge Sam A Lindsay on 5/13/05) (jrb,) (Entered: 05/13/2005)

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